

**In the District Court of the United States
for the Northern District of Florida**

CRIMINAL No. 761

UNITED STATES OF AMERICA

v.

CHARLES A. GASKIN

STATEMENT OF JURISDICTION

(Filed May 4, 1943)

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith the statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this case.

A. Statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, U. S. C., Section 682, as amended by the Act of May 9, 1942 (56 Stat. 271), otherwise known as "Criminal Appeals Act," and by Title 28, U. S. C., Section 345.

B. The statute of the United States, the construction of which is involved herein, is Section 269 of the Criminal Code (18 U. S. C. 444):

Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than \$5,000, or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, § 269, 35 Stat. 1142.)

C. The opinion and judgment of the district court sought to be reviewed were entered April 5, 1943, and the petition for appeal was filed May 4, 1943, and is presented to the district court herewith, to wit, on the 4th day of May 1943.

The indictment in this case contains one count.

A demurrer was filed to this count and the district court sustained the demurrer. The government appeals from the ruling of the district court sustaining the demurrer.

The indictment was based on Title 18, U. S. C., Section 444, which is quoted above and more particularly that portion which makes it an offense to arrest any person to a condition of peonage. It is alleged that the defendant upon a claim of indebtedness to him from James Johnson and with the purpose of compelling Johnson against his will to perform labor in satisfaction of the debt, forcibly arrested Johnson and transported him from a place near Panama City, Florida, to Wewahitchka, Florida.

The district court in sustaining the demurrer to this indictment construed Section 444 as not embracing the case of an arrest for the purpose of causing the person to perform labor and work in satisfaction of a debt against the will of such person unless the alleged peon renders actual labor or service for the master. The question in the instant case is one of first impression, that is, at what stage in the activities of a master seeking to compel service of a peon in liquidation of a debt, real or pretended, the "condition of peonage" arises. This question, we believe, is of paramount public importance. Perhaps no Constitutional right is more fundamental than the right to a personal freedom as enunciated by the Thirteenth Amendment to the Constitution.

We submit that the loss of freedom incident to an "arrest" when the purpose of the arrest is to compel the victim to work out a debt against his will is patently within Section 444. The word "arrest" seems plainly to have been used to prescribe the act by which the condition of peonage is initiated (see *Clyatt v. United States*, 197 U. S. 207, *In re Peonage Charge*, 138 Fed. 686, 689) for upon the arrest of a person in order to compel him to work out a debt, the arrestee is subjected to the will of the master and is in a condition of involuntary servitude. See *Hodges v. United States*, 203 U. S. 1, 17. The assertion of the binding cord of debt then makes the condition of

involuntary servitude peonage. Unless this construction is correct, the word "arrest" as used in the statute is surplusage.

D. The following decisions sustained the jurisdiction of the Supreme Court under that provision of the Criminal Appeals Act allowing a direct appeal to the Supreme Court "From a decision or judgment * * * sustaining a demurrer to any indictment, or any count thereof, where such decision or judgment is based upon the * * * construction of the statute upon which the indictment is founded": *United States v. Birdsall*, 233 U. S. 223, 230; *United States v. Patten*, 226 U. S. 525, 535; *United States v. Heinze*, 218 U. S. 532, 540; *United States v. Stevenson*, 215 U. S. 190, 194-195; *United States v. Kapp*, 302 U. S. 214, 217; *United States v. Lepowitch and Spector*, No. 629, this Term, decided April 19, 1943.

Appended hereto is a copy of the opinion of the district court rendered on April 5, 1943.

Respectfully submitted.

CHARLES FAHY,

Solicitor General.

GEORGE EARL HOFFMAN,

*United States Attorney for
the Northern District of Florida.*

**In the District Court of the United States
for the Northern District of Florida**

MC DOCKET No. 761

UNITED STATES OF AMERICA, PLAINTIFF

v.

CHARLES A. GASKIN, DEFENDANT

ARREST TO CONDITION OF PEONAGE

This cause coming on to be considered this date in open Court, the defendant being present in person and by counsel upon the demurrer challenging the sufficiency of the indictment to charge and the statute (Section 444, Title 18, United States Code) in denouncing the crime of arrest to a condition of peonage, and the same having been argued by counsel for the Government and the defendant and the Court being advised of its opinion:

IT IS ORDERED that the demurrer be and the same is hereby sustained.

DONE and ORDERED at Marianna this 5th day of April, A. D. 1943.

AUGUSTINE V. LONG,
United States District Judge.

OPINION

It is the view of the Court that Section 444, Title 18, United States Code Annotated does not visit a penalty for an arrest to a condition of peonage where the arrest is upon a claim of indebtedness for the purpose and intent of causing such person to perform labor and work in satisfaction of said debt forcibly and against the will of such person as alleged and set forth in the indictment returned in this case. There is no allegation in the indictment in this case that the alleged peon rendered any actual labor or service for the master. The statute contemplates actual servitude, and upon charge of an arrest to a condition of peonage, an indictment thereunder must carry an allegation with reference to servitude following the arrest. The failure of the indictment in this case to carry such allegation renders it vulnerable under the statute.

AUGUSTINE V. LONG,
United States District Judge.